

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL D. GARVER,)	
)	
Petitioner,)	
)	
v.)	
)	
STATE OF NEBRASKA, and)	
DISTRICT COURT STANTON)	
COUNTY, NEBRASKA,)	
)	
Respondents.)	

4:15CV3017

**MEMORANDUM
AND ORDER**

Petitioner Michael Garver filed a Petition for Writ of Habeas Corpus (Filing No. [1](#)) on February 19, 2015. This matter is before the court on preliminary review of the petition. Petitioner's claim for relief is difficult to decipher. Petitioner wrote, in relevant part:

In 2010 I was already serving a 3-4 year sentence for att. burglary, I got sentenced to serve the 1-2 years consequutive [sic] to that May 3, 2010. The 1-2 years was no imposed, I was granted RFP and the Parole, which I completed successfully.

I [sic] 2014 I was convicted of Att. delivery of a controlled substance [and was] sentenced to 1-1 years with 3 months left before my TRD I received a revised (Parole/Release) form in which the 1-2 years from Stanton County is now being imposed consequitively [sic] to the 1-1 years. Which I feel is in violation of the Constitution as it was originally set to be Imposed consequitively [sic] to my 3-4 years in May of 2010.

(Filing No. [1](#) at CM/ECF p. 5.)

As best as the court can tell, Petitioner is challenging the calculation of his release or parole date. While this claim is potentially cognizable in a federal habeas

corpus action, this case may not proceed any further until Petitioner names a proper Respondent.

Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts states that “[i]f the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.” *See Rumsfeld v. Padilla, 542 U.S. 426, 434 (2005)* (“The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is the person who has custody over the petitioner.”) (internal quotation marks and brackets omitted).

Here, Petitioner has named the State of Nebraska and the District Court of Stanton County, Nebraska, as the respondents. In order for this matter to proceed, Petitioner must file an amended petition for writ of habeas corpus naming the current warden of Petitioner’s place of confinement as the respondent. In the alternative, Plaintiff may file a motion to substitute party in which he asks the court to substitute the current warden of his present place of confinement as the respondent.

IT IS THEREFORE ORDERED that:

1. On the court’s own motion, Petitioner has 30 days to file an amended petition for writ of habeas corpus naming the current warden of Petitioner’s place of confinement as the respondent. In the alternative, Petitioner may file a motion to substitute party in which he asks the court to substitute the current warden at his present place of confinement as the respondent.
2. Failure to comply as directed may result in dismissal of this matter without further notice to Petitioner.

3. The clerk of the court is directed to set the following pro se case management deadline: May 22, 2015: Deadline for the petitioner to name proper respondent.

DATED this 22nd day of April, 2015.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge

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